



FERRUZZO

Overview & Estate Law Changes



Blaine M. Searle is an Equity Partner at FERRUZZO. He received a master's degree in taxation from Georgetown University and regularly advises clients on matters involving federal income, gift and estate taxes as well as various state tax issues including California real property taxes.

Mr. Searle represents clients in contract matters that arise in day-to-day business operations and has extensive experience in implementing mergers, reorganizations, acquisitions and sales of businesses.

Mr. Searle frequently counsels clients on various estate planning strategies from simple trusts to more complex estate planning including the use of qualified personal residence trusts, intentionally defective grantor trusts, and transferring assets through family limited liability companies.



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Education:

- Brigham Young University
 - Bachelor of Arts – Political Science
 - Bachelor of Science – Russian
- University of Oregon School of Law – Doctor of Jurisprudence
- Georgetown University Law Center – LL.M. in Taxation

Admissions:

- State Bar of California
- State Bar of Arizona
- Member of Orange County Bar Association
 - Trusts and Estates Section
 - Tax Law Section, former Chair

Death and Taxes

Our new Constitution is now established, everything seems to promise it will be durable; but, in this world, nothing is certain except death and taxes.

Benjamin Franklin

What is an Estate Plan?

An estate plan is a mechanism for ensuring that:

- You are cared for during your incapacity; and
- After your death, your assets go to your desired recipients in the proper manner.

What Happens if I don't have an Estate Plan?

The State of California has an estate plan for the disposition of your assets after death – it just may not be what you want.

“Any part of the **estate** of a decedent not effectively disposed of by **will** passes to the **decedent's heirs** as prescribed in this part.”

- California Probate Code § 6400

My Spouse Gets Everything, Right?

“As to **community property**, the **intestate share** of the surviving spouse is the one-half of the community property that belongs to the decedent...”

- California Probate Code § 6401(a)
- Community property = property acquired during marriage
- Intestate share = distribution when not otherwise directed by will, trust, beneficiary designation, or disposition by operation of law

My Spouse Gets Everything, Right?

“As to **separate property**, the **intestate share** of the surviving spouse is as follows:

- The *entire intestate estate* if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister.
- *One-half of the intestate estate* in the following cases:
 - Where the decedent leaves only one child or the issue of one deceased child.
 - Where the decedent leaves no issue, but leaves a parent or parents or their issue or the issue of either of them.
- *One-third of the intestate estate* in the following cases:
 - Where the decedent leaves more than one child.
 - Where the decedent leaves one child and the issue of one or more deceased children.
 - Where the decedent leaves issue of two or more deceased children.
 - California Probate Code § 6401(c)

My Spouse Gets Everything, Right?

- Community Property
 - Income or property obtained during marriage
- Separate Property
 - Income or property obtained prior to marriage
 - Property purchased using separate property funds
 - Inheritance/bequests
 - Gifts

My Spouse Gets Everything, Right?

- How your spouse can get everything:
 - No children, grandchildren, great-grandchildren
 - No parents
 - No siblings
 - No nieces or nephews
 - California Probate Code § 6401(c)

What if I Do Nothing?

Takeaway:

Unless you are comfortable leaving the disposition of your estate up to California Probate Code, you should consider the most basic estate planning tool: **the will**

Where There's a Will – There's a Way

- You get to choose who acts as your executor, waive bond, and direct where your assets go at your death.
- You do not get to skip probate unless your assets are less than \$184,500, combined.
- The contents and disposition of your estate becomes public record.

Where There's a Will – There's a Way

- Probate costs include filing fees, publication fees, and probate referee fees
- Attorney's fees are based upon a statutory calculation:
 - 4% of the first \$100,000 (or \$4,000)
 - 3% of the next \$100,00 (or \$3,000)
 - 2% of the next \$800,000 (or \$16,000)
 - 1% of the next \$900,000 (or \$9,000)
 - 0.5% of the next \$15,000,000 (or \$75,000)
 - NOTE: these are based upon the gross estate, not the net estate

Trusts

The best way to avoid probate is through the creation and proper funding of a trust. The parties to the trust are:

- Settlor
- Trustee
- Beneficiaries

Parties to a Trust: Settlor

- The settlor creates the trust
 - Chooses immediate and successor trustees
 - Identifies initial and remainder beneficiaries
 - Signs the trust “contract”
- Trust Funding
 - Transfer of title to trust
 - Changing title to bank accounts
 - Recording deed to real property
 - Assignment of personal property to trust
 - Proper steps to ensure that property ends up in trust before or after death

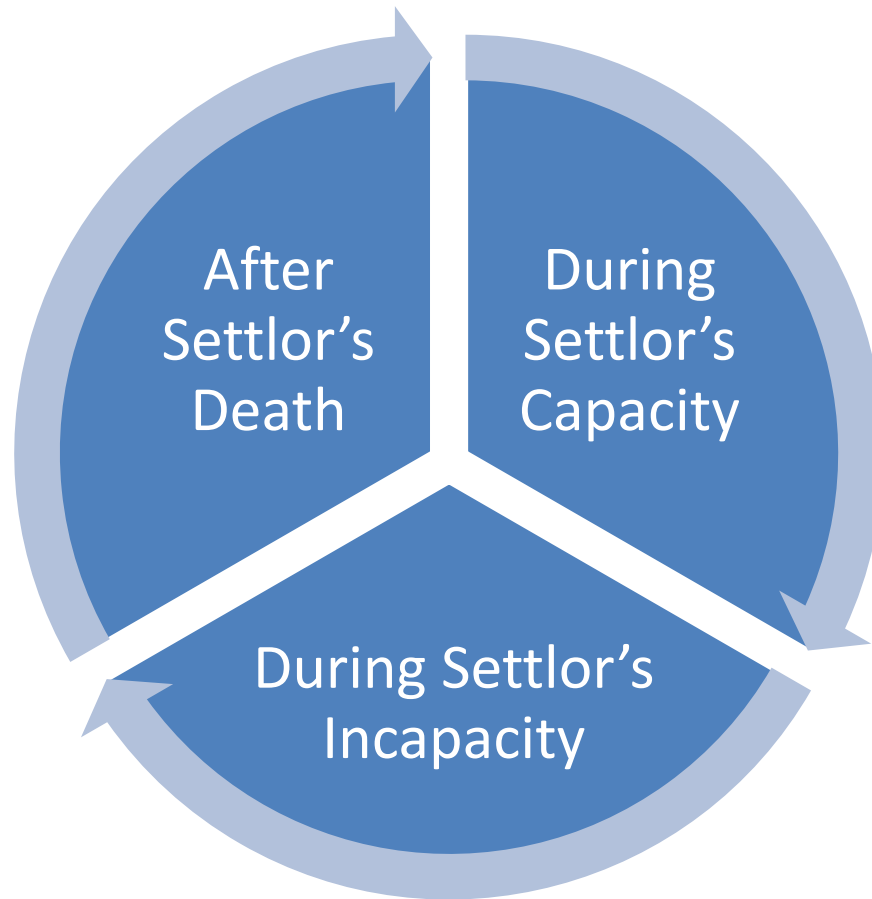
Parties to a Trust: Trustee

- The trustee manages the property in the trust
 - Has authority to manage everything transferred into the trust
 - Limited by the powers identified in the trust
 - Fiduciary duty to the trust beneficiaries
- Who can be a trustee?
 - Individual (friends and family)
 - Private professional fiduciary
 - Trust company

Parties to a Trust: Beneficiaries

- The beneficiaries receive the trust property
- Settlor is the primary beneficiary during life
- Property is held for remainder beneficiaries after death of settlor
 - Outright distribution
 - Distribution in trust

Phases of a Trust



What is a Trust?

- Articles Governing Establishment and Administration by Settlor
 - Statement of intent to establish trust and hold property in trust
 - Provisions confirming powers retained by settlor
 - Provisions describing trustee succession
- Articles Governing Administration by Successor Trustee During Incapacity
- Articles Governing Administration by Successor Trustee After Death
- Articles Governing Administration of Subtrusts for Beneficiaries

What Type of Trust is Right for You?

- It depends on if you are single or married.
- It depends on whether you have a blended family.
- It depends on whether you are trying to plan for estate taxes or merely avoid probate.
- It depends on how you would like the beneficiaries to inherit your property.

Trust Funding

- Requires transferring certain property into the trust:
 - Real Property – deed recording (caution regarding encumbered property)
 - Tangible Personal Property – bill of sale
 - Entities – assignment documents
 - Bank Accounts/Brokerage Accounts – changing title with the bank or financial advisor

Trust Funding

- Certain assets are not transferred to the trust:
 - Retirement Accounts (401Ks, IRAs) – beneficiary designation
 - Life Insurance – beneficiary designations

Other Estate Planning Documents

- Pour-Over Will
- Power of Attorney
- Advance Healthcare Directive
- HIPAA Authorization
- Assignment Documents
- Deed transferring real property in the trust
- Memorandum of Tangible Personal Property

Estate Taxes

- Estate Tax Lifetime Exemption
 - 2024: \$13.61 million per person (\$27.22 million per couple)
 - 2025: Increased for cost-of-living adjustments
 - 2026: Approximately \$7 million per person (\$14 million per couple)
- Estate Tax – 40% of assets over Lifetime Exemption
- No California estate tax – yet

Estate Tax - Illustration

If a single person died in 2024 owning \$12 million of assets, because the \$13.61 million exemption exceeds the value of the assets, no estate tax would be due.

If instead a single person died in 2024 owning \$15 million of assets, \$13.61 million of the assets would be exempt and the remaining \$1.39 million would be subject to the 40% estate tax resulting in \$556,000 in estate taxes.


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